

03:52PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

February 29, 2024

TRANSCRIPT EXCERPT - TESTIMONY OF MARK GENTILE - DAY 1
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

UNITED STATES DEPARTMENT OF JUSTICE
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And

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For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN K. HALLIDAY, his Special Agent
KAREN A. CHAMPOUX, USA Paralegal

LAW CLERK: REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

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* * * * *

(Excerpt commenced at 3:52 p.m.)

(Jury is present.)

THE COURT: The government can call its next witness.

MR. TRIPI: We call Mark Gentile, Your Honor.

M A R K G E N T I L E, having been duly called and sworn,
testified as follows:

MR. TRIPI: May I, Your Honor?

THE COURT: You may.

MR. TRIPI: Thank you.

DIRECT EXAMINATION BY MR. TRIPI:

Q. Good afternoon, Mr. Gentile. How are you?

A. Good thanks.

Q. Mr. Gentile, by whom are you employed, sir?

A. I'm currently a group supervisor with the Drug
Enforcement Administration here in Buffalo, New York.

Q. And where are you from originally?

03:54PM 1 A. I'm originally from the Syracuse area, specifically
03:54PM 2 Auburn, New York.

03:54PM 3 Q. And how long have you been in the DEA in Buffalo?

03:54PM 4 A. Just over 25 years now.

03:54PM 5 Q. And what was your DEA graduating class number?

03:54PM 6 A. I was graduating class number 130.

03:54PM 7 Q. What year was that?

03:54PM 8 A. That would have been April -- I'm sorry, yes, April of
03:54PM 9 1999.

03:54PM 10 Q. And was Buffalo your first stop after graduating?

03:54PM 11 A. I was actually hired out of the Riverside, California
03:54PM 12 office. I was previously a border patrol agent in San Diego.
03:54PM 13 I reported back to Riverside for a few months, and ultimately
03:54PM 14 transferred to Buffalo.

03:54PM 15 Q. Did you pick Buffalo, or did they send you to Buffalo?

03:54PM 16 A. I chose it.

03:55PM 17 Q. Okay. So I guess I should ask you just a little bit
03:55PM 18 about your experience prior to the DEA. What agency did you
03:55PM 19 work for?

03:55PM 20 A. I was a border patrol agent from 1995 to 1999 assigned to
03:55PM 21 the San Diego sector, San Diego, California.

03:55PM 22 Q. And just generally, what were your duties as a border
03:55PM 23 patrol agent for those four years?

03:55PM 24 A. My duties included enforcing the immigration laws of the
03:55PM 25 United States.

03:55PM 1 Q. And do you have some formational education, too?

03:55PM 2 A. Yes, I do.

03:55PM 3 Q. Can you describe that for the jury?

03:55PM 4 A. I have my bachelor's degree in criminal justice.

03:55PM 5 Q. From where?

03:55PM 6 A. Rochester Institute of Technology.

03:55PM 7 Q. And so you've been with the DEA about 25-plus years. Can

03:55PM 8 you describe your progression through the Buffalo office?

03:55PM 9 A. Yes. When I was originally assigned to the Buffalo

03:55PM 10 office, I came on as a special agent, and I promoted to the

03:55PM 11 position of a group supervisor in June of 2019.

03:56PM 12 Q. What year was it when you got to Buffalo?

03:56PM 13 A. I reported to Buffalo in 1999.

03:56PM 14 Q. Okay. I think I asked you that, sorry about that.

03:56PM 15 Eventually, did -- well, withdrawn.

03:56PM 16 When you became a DEA agent, did you take an oath?

03:56PM 17 A. Yes.

03:56PM 18 Q. What was the oath that you took?

03:56PM 19 A. To enforce the federal narcotics laws of the United

03:56PM 20 States Code.

03:56PM 21 Q. And do you take that oath seriously?

03:56PM 22 A. Yes.

03:56PM 23 Q. Why do you take it seriously?

03:56PM 24 A. I believe we have a very important job to do.

03:56PM 25 Q. And when you're enforcing those federal drug laws, do you

03:56PM 1 take things like a person's race into account?

03:56PM 2 A. No.

03:56PM 3 Q. Do you take personal relationships into account?

03:56PM 4 A. No.

03:56PM 5 Q. Do you take friendships into account?

03:57PM 6 A. No.

03:57PM 7 Q. Would it be improper to do those things?

03:57PM 8 A. I believe so, yes.

03:57PM 9 Q. Would it be a violation of the oath that you took?

03:57PM 10 A. Yes.

03:57PM 11 Q. So you said you've been a group supervisor since June of

03:57PM 12 2019, but prior to that you were a special agent; is that

03:57PM 13 correct?

03:57PM 14 A. Yes.

03:57PM 15 Q. What are your duties as a special agent?

03:57PM 16 A. Ultimately, we enforce title 21 of United States Code.

03:57PM 17 And to do that, our main duties include surveillance work,

03:57PM 18 writing reports, meeting with confidential sources, wiretap,

03:57PM 19 whatever the case would entail.

03:57PM 20 Q. What types of controlled substances does the DEA

03:57PM 21 investigate and arrest people and support prosecutions for?

03:57PM 22 A. We arrest people for everything from heroin, marijuana,

03:58PM 23 cocaine, fentanyl, Ecstasy, methamphetamine.

03:58PM 24 Q. Basically, all controlled substances, right?

03:58PM 25 A. Yes.

03:58PM 1 Q. And federally, marijuana is still a Schedule I controlled
03:58PM 2 substance, correct?

03:58PM 3 A. Yes.

03:58PM 4 Q. And in your experience, through your tenure at the DEA,
03:58PM 5 is a 1,000-plus kilogram marijuana conspiracy, is that a
03:58PM 6 significant case?

03:58PM 7 A. Yes.

03:58PM 8 Q. Has that always been true?

03:58PM 9 A. Yes.

03:58PM 10 Q. Now, eventually, during your time at the DEA, did you
03:58PM 11 begin working with a special agent named Joseph Bongiovanni?

03:58PM 12 A. Yes.

03:58PM 13 Q. And did he arrive in Buffalo sometime after you started
03:58PM 14 there?

03:58PM 15 A. Yes, I believe he arrived a year or two after my arrival.

03:58PM 16 Q. So that would put him around 2001?

03:58PM 17 A. I think that's accurate, yes.

03:59PM 18 Q. Do you see him in court today?

03:59PM 19 A. I do.

03:59PM 20 Q. Can you please point to him and describe something he's
03:59PM 21 wearing?

03:59PM 22 A. Yes, he's sitting at the defense table, dark suit, white
03:59PM 23 shirt, gray tie.

03:59PM 24 Q. Which chair is he in?

03:59PM 25 A. The middle chair.

MR. TRIPI: Your Honor, may the record reflect the identification of defendant.

THE COURT: It does.

MR. TRIPI: Thank you.

BY MR. TRIPI:

Q. During your overlapping period in the Buffalo office, did you work in the same group as Mr. Bongiovanni?

A. Yes. There was -- for multiple years there was some movement there, but I was in his group at various times throughout.

Q. And maybe I should ask, the DEA has several groups; is that right?

A. Yes. Our office, throughout the years, there's always been at least two groups.

Q. What would those two primary groups have been?

A. One was considered what's called a task force group, that's comprised of both special agents and local and state law enforcement officers.

And the other group is what is referred to as an enforcement group, and typically that contains more special agents than task force officers.

Q. Did those group have numbers?

A. Yes.

Q. What were the numbers?

A. Again, those numbers have changed over the years.

04:00PM 1 Currently those numbers are what are referred to D-57 and
04:00PM 2 D-58.

04:00PM 3 Q. Now with regard to Mr. Bongiovanni, in a one-on-one
04:00PM 4 setting, did you ever socialize with him outside of work?

04:00PM 5 A. Office functions, Christmas parties, things like that.

04:00PM 6 Q. So nothing just you and him?

04:00PM 7 A. No.

04:00PM 8 Q. Were you friendly with him at work?

04:00PM 9 A. Yes.

04:00PM 10 Q. Did you get to know him through the years?

04:00PM 11 A. Yes, I did.

04:00PM 12 Q. Do you have any -- anything personally against him as you
04:00PM 13 sit here today?

04:00PM 14 A. I don't.

04:00PM 15 Q. Would you prefer this circumstance not exist?

04:01PM 16 A. Absolutely.

04:01PM 17 Q. Now, during your tenure in the DEA with

04:01PM 18 Mr. Bongiovanni -- withdrawn.

04:01PM 19 Would it be fair to say his retirement from the DEA was
04:01PM 20 shortly before you became a group supervisor in 2019?

04:01PM 21 A. Yes, I believe it was probably a few months prior to me
04:01PM 22 becoming a supervisor.

04:01PM 23 Q. So for the bulk of -- for all of your tenure together,
04:01PM 24 you were both special agents, correct?

04:01PM 25 A. Yes.

1 Q. Have you ever -- what is a co-case agent?

2 A. A co-case agent is somebody that would assist what we

3 call the lead case agent. Often assisting with whatever the

4 case would require. It can be, you know, assisting with

5 surveillance work, doing paperwork, things like that.

6 Q. As far as you recall, have you ever been a co-case agent

7 on a case with Mr. Bongiovanni?

8 A. I don't believe so, no.

9 Q. Have you ever been what's considered a partner of

10 Mr. Bongiovanni?

11 A. Not a partner, just would occasionally assist any

12 investigations he had going on.

13 Q. That was my next question. Have you assisted him from

14 time to time?

15 A. Yes.

16 Q. Has he assisted you?

17 A. Yes.

18 Q. And is it a relatively small office?

19 A. I think everybody knows everybody, yes.

20 Q. At some point, would it be fair to say that everyone has

21 assisted everybody else to some degree?

22 A. Yes.

23 Q. During your time working in the office with

24 Mr. Bongiovanni, did you know him to be someone in the office

25 who did many wiretaps?

04:03PM 1 A. I do recall a federal wiretap that he did early in his
04:03PM 2 career. And then I believe towards the end of his career, he
04:03PM 3 assisted on a New York State wiretap with the New York State
04:03PM 4 Attorney General's Office.

04:03PM 5 Q. In your view, is two wiretaps in the spanning
04:03PM 6 approximately 20 years, is that a lot of wiretaps?

04:03PM 7 A. It varies. There's individuals that don't do any.

04:03PM 8 Q. Do you think two is a high number?

04:03PM 9 A. I'm going to say it's average.

04:03PM 10 Q. Okay. Did you know him to be someone who ran a lot of
04:03PM 11 pen registers?

04:03PM 12 A. I don't.

04:03PM 13 Q. Who did you understand to be individuals who would be
04:03PM 14 considered partners of Mr. Bongiovanni through the years?

04:03PM 15 A. I believe he worked with a Task Force Officer Joseph
04:04PM 16 Palmieri.

04:04PM 17 Earlier, prior to that, I believe he worked with a Task
04:04PM 18 Force Officer Thomas Doctor.

04:04PM 19 And that's all that kind of comes to mind right now.

04:04PM 20 Maybe DEA Agent Michael Hill.

04:04PM 21 Q. So, so you said the earlier part of his career, Thomas
04:04PM 22 Doctor. What years would you estimate that to be?

04:04PM 23 A. I can't recall exact years. I can remember it is --
04:04PM 24 throughout my career, our office has moved to various
04:04PM 25 locations. Our first office -- at least my first office when

04:04PM 1 I came here was in the Guaranty Building here in Buffalo.

04:04PM 2 And that had to be somewhere through 2002 through 2008 maybe.

04:04PM 3 Q. So that's the estimated window of time where Mr. Doctor

04:05PM 4 was his partner, somewhere in there?

04:05PM 5 A. I don't know if Mr. Doctor was there for the full six

04:05PM 6 years, but that would have been the time frame he was there.

04:05PM 7 Q. Okay. So, somewhere in that window of time, Doctor's his

04:05PM 8 partner?

04:05PM 9 A. Yes.

04:05PM 10 Q. And then after that, Palmieri becomes his partner at some

04:05PM 11 point?

04:05PM 12 A. Yes.

04:05PM 13 Q. And did that continue until Palmieri left the DEA?

04:05PM 14 A. I believe so, yes.

04:05PM 15 Q. And do you remember what approximate year that was that

04:05PM 16 Palmieri left?

04:05PM 17 A. I don't remember the exact year. I believe it was prior

04:05PM 18 to Mr. Bongiovanni's retirement. And it was definitely prior

04:05PM 19 to my promotion, so --

04:05PM 20 Q. Was there ever a time that, in terms of office space,

04:05PM 21 where you were physically positioned near Mr. Bongiovanni in

04:05PM 22 terms of seating within the office?

04:05PM 23 A. At our -- and I'll call it our second office which was

04:06PM 24 the Electric Tower here in Buffalo, I believe there was a

04:06PM 25 time frame where myself and Mr. Bongiovanni, being assigned

04:06PM 1 to the same group, we sat next to each other, 10 or 15 feet
04:06PM 2 away from each other, same row.

04:06PM 3 Q. Can you give us the approximation of the years that
04:06PM 4 seating arrangement existed?

04:06PM 5 A. I believe we moved into the Electric Tower in 2008. And
04:06PM 6 I think upon our -- once we first moved in there, it would
04:06PM 7 have been around that time frame.

04:06PM 8 Q. For how many years?

04:06PM 9 A. Again, it's a guess, I'm going to approximate, maybe
04:06PM 10 three or four years.

04:06PM 11 Q. While you did sit in approximately in some proximity to
04:06PM 12 Mr. Bongiovanni in the Electric Tower, do you ever recall
04:06PM 13 seeing a particular file on his desk in his possession?

04:07PM 14 A. Yes.

04:07PM 15 Q. Was it a file that you observed in his possession
04:07PM 16 frequently on his desk?

04:07PM 17 A. I did observe it on his desk, yes.

04:07PM 18 Q. What did the file look like?

04:07PM 19 A. It was a -- a brown folder. It had a -- a name written
04:07PM 20 across the top of it.

04:07PM 21 Q. What was the name you remember seeing?

04:07PM 22 A. Serio.

04:07PM 23 Q. Now, regarding a DEA case file C2-13-0026, file title
04:07PM 24 Wayne Anderson, as that file pertains to a Ron Serio, were
04:07PM 25 you ever a case agent or did you ever assist Joe Bongiovanni

04:07PM 1 the defendant in any way on that case?

04:07PM 2 A. No.

04:07PM 3 Q. Regarding that case file, did you ever sign any documents
04:08PM 4 in that case at Mr. Bongiovanni's request?

04:08PM 5 A. No.

04:08PM 6 Q. Regarding that DEA case file, did you have any awareness
04:08PM 7 of the facts pertaining to the confidential source that
04:08PM 8 Mr. Bongiovanni had activated and deactivated in that case?

04:08PM 9 A. I did not.

04:08PM 10 Q. And through the years of working at the DEA, prior to
04:08PM 11 becoming a group supervisor, were there times where you acted
04:08PM 12 as an acting group supervisor?

04:08PM 13 A. Occasionally, yes.

04:08PM 14 Q. And can you tell the jury what happens, like, when an
04:08PM 15 agent has to act as a group supervisor?

04:08PM 16 A. Typically, if the actual group supervisor can't be in the
04:09PM 17 office for vacation or sickness, that person will delegate
04:09PM 18 somebody within the group to be the acting group supervisor.

04:09PM 19 Q. And does an acting group supervisor, much like a group
04:09PM 20 supervisor, sign off on documents?

04:09PM 21 A. Yes.

04:09PM 22 Q. When you do that, as an acting group supervisor and now
04:09PM 23 as a group supervisor, do you individually reinvestigate all
04:09PM 24 of the information in the report that you're signing off on?

04:09PM 25 A. I don't.

04:09PM 1 Q. Would that be practical to do?

04:09PM 2 A. I don't believe so, no.

04:09PM 3 Q. When you are submitted a document as a group supervisor
04:09PM 4 or previously when you acted as group supervisor, do you
04:09PM 5 trust the information that's documented in the report that's
04:09PM 6 provided to you to sign off on?

04:09PM 7 A. Yes, I do.

04:09PM 8 Q. Is that trust something that's important when you're
04:09PM 9 working in law enforcement generally and specifically in the
04:10PM 10 DEA Buffalo office?

04:10PM 11 A. Yes.

04:10PM 12 Q. Why is that trust important?

04:10PM 13 A. It's important because the job we do, there's -- there's
04:10PM 14 a danger aspect to it, and it's just -- it's very important.

04:10PM 15 Q. Are you required to act with integrity in your
04:10PM 16 interpersonal dealings with fellow agents?

04:10PM 17 A. Yes.

04:10PM 18 Q. Are you required to be honest and accurate in the reports
04:10PM 19 that are filed?

04:10PM 20 A. Yes.

04:10PM 21 Q. Are all agents under those same obligations?

04:10PM 22 A. Yes.

04:10PM 23 Q. Are there times when you're an investigator in a case and
04:10PM 24 you -- where you make an application in support of a search
04:10PM 25 warrant ultimately intended for a federal court where you

04:10PM 1 have to sign and swear to the contents of an affidavit?

04:10PM 2 A. Yes.

04:10PM 3 Q. Are there times in your career that you're aware of where
04:10PM 4 some of the information in an affidavit that you're swearing
04:10PM 5 to was provided to you by other members of law enforcement?

04:10PM 6 A. Yes.

04:10PM 7 Q. And before you sign and take an oath that the information
04:11PM 8 is true, do you have to trust those other members of law
04:11PM 9 enforcement to do that?

04:11PM 10 A. Yes.

04:11PM 11 Q. To do that confidently?

04:11PM 12 A. Yes.

04:11PM 13 Q. To do that honestly before a judge, similar to the judge
04:11PM 14 that's sitting here?

04:11PM 15 A. Yes.

04:11PM 16 Q. When you put your signature on a line, whether it be a
04:11PM 17 search warrant or other report associated with your job, are
04:11PM 18 you taking ownership of that document?

04:11PM 19 A. Yes.

04:11PM 20 Q. And when you sign those documents in your capacity as a
04:11PM 21 group supervisor and a special agent, do you have an
04:11PM 22 awareness that untruths in those, documents whether a search
04:11PM 23 warrant or an affidavit, could ruin -- can end your career?

04:12PM 24 A. Yes.

04:12PM 25 Q. So do you take it seriously when you sign?

04:12PM

1 A. I do.

04:12PM

2 Q. Now, in your capacity as a group supervisor and

04:12PM

3 previously as an acting group supervisor, have other agents

04:12PM

4 in the DEA have an opportunity to see your signature?

04:12PM

5 A. Yes.

04:12PM

6 Q. Because you have to sign the reports, right?

04:12PM

7 A. Yes.

04:12PM

8 Q. During the course of working with defendant Bongiovanni,

04:12PM

9 has he had an opportunity to observation your signature on

04:12PM

10 documents?

04:12PM

11 A. I would assume.

04:12PM

12 Q. And you sat pretty much next to each other for a period

04:12PM

13 of time?

04:12PM

14 A. Yes.

04:12PM

15 Q. And in your career in the DEA office, have you signed

04:12PM

16 hundreds or thousands of documents around that office?

04:12PM

17 A. Probably thousands.

04:12PM

18 Q. In your view, is your signature simplistic?

04:13PM

19 A. I think so.

04:13PM

20 Q. Is it brief?

04:13PM

21 A. Yes.

04:13PM

22 Q. In your view, is your signature one that might be easy to

04:13PM

23 duplicate?

04:13PM

24 A. Yes.

04:13PM

25 Q. Now, DEA's a busy place, right?

04:13PM 1 A. Yes.

04:13PM 2 Q. Are there times when there are situations where you've
04:13PM 3 signed a document for another agent?

04:13PM 4 A. Yes.

04:13PM 5 Q. And do you have a standard routine practice that you
04:13PM 6 follow when you do that?

04:13PM 7 A. Yes.

04:13PM 8 Q. Can you describe your standard routine practice that you
04:13PM 9 engage in when you sign the document for another agent?

04:13PM 10 A. I would sign my name, with a slash, and then the letters
04:13PM 11 F-O-R, for.

04:13PM 12 Q. And why do you sign your name on the signature line and
04:13PM 13 then slash it and write the word F-O-R?

04:14PM 14 A. To show that I'm signing for the name or the person whose
04:14PM 15 name is most likely typed into that that box or line there.

04:14PM 16 **MR. TRIPI:** Now, I'd like to put up on the monitor
04:14PM 17 screen, this is in evidence already, Your Honor, Government
04:14PM 18 Exhibit 9E3.

04:14PM 19 **BY MR. TRIPI:**

04:14PM 20 Q. Can you see that okay? Or would you like it blown up
04:14PM 21 more? The whole document, I don't know if we can get the
04:14PM 22 whole page blown up.

04:14PM 23 A. I can see it.

04:14PM 24 Q. Generally speaking, as it relates to the title of the
04:14PM 25 form and the form number, are you familiar with this

04:14PM 1 document, what this document is?

04:14PM 2 A. Yes.

04:14PM 3 Q. What is it?

04:14PM 4 A. This is a DEA form 512D. It's a confidential source
04:15PM 5 deactivation form.

04:15PM 6 Q. Now, in box 1, there is -- well, let me back up for a
04:15PM 7 second.

04:15PM 8 **MR. TRIPI:** We can X out of that.

04:15PM 9 **BY MR. TRIPI:**

04:15PM 10 Q. Prior to testifying here today, you've reviewed that
04:15PM 11 exact form, correct?

04:15PM 12 A. Yes.

04:15PM 13 Q. Did you have any involvement in drafting that form?

04:15PM 14 A. No.

04:15PM 15 Q. Are you familiar with the content of that form in terms
04:15PM 16 of the veracity of the contents?

04:15PM 17 A. I'm not, no.

04:15PM 18 Q. Have you -- now, let's go to box 1. Have you ever
04:15PM 19 interacted with C.S. 13-144841?

04:15PM 20 A. Not to my knowledge, no.

04:15PM 21 Q. Do you know as you sit here who that person is?

04:15PM 22 A. No.

04:15PM 23 Q. Was the first time you saw this specific form when you
04:16PM 24 were interviewed by the Department of Justice Office of
04:16PM 25 Inspector General?

04:16PM 1 A. Yes.

04:16PM 2 Q. Prior to seeing that form during your interview with DOJ
04:16PM 3 OIG, have you ever seen this exact document before?

04:16PM 4 A. No.

04:16PM 5 **MR. TRIPI:** You can zoom out of that box, please.

04:16PM 6 If we could zoom in on the signature lines from box
04:16PM 7 11 down, please.

04:16PM 8 **BY MR. TRIPI:**

04:16PM 9 Q. Now, in box 11, do you recognize the printed name there?

04:16PM 10 A. Yes.

04:16PM 11 Q. And whose printed name is there?

04:16PM 12 A. Joseph Bongiovanni.

04:16PM 13 Q. And what is box 11 depicting Joseph Bongiovanni's role is
04:16PM 14 as relates to this confidential source deactivation?

04:16PM 15 A. It identifies him as being the controlling agent.

04:17PM 16 Q. And in the box 11A, do you see where it says signature of
04:17PM 17 controlling agent?

04:17PM 18 A. Yes.

04:17PM 19 Q. Do you see a signature there?

04:17PM 20 A. Yes.

04:17PM 21 Q. Do you recognize that signature?

04:17PM 22 A. I believe it's Joseph Bongiovanni's.

04:17PM 23 Q. Does it look -- look like a signature you've seen for him
04:17PM 24 before?

04:17PM 25 A. Yes.

04:17PM 1 Q. And do you see the date of that document?

04:17PM 2 A. September 9th of 2013.

04:17PM 3 Q. Now, I'd like to move you down to box 13 for a moment.

04:17PM 4 Do you see whose name is typed and printed there?

04:17PM 5 A. Yes.

04:17PM 6 Q. And who is that?

04:17PM 7 A. John Flickinger.

04:17PM 8 Q. And at the time of September 9, 2013, was he a group

04:17PM 9 supervisor similar to what you are today?

04:17PM 10 A. Yes.

04:17PM 11 Q. And in box 13A, do you see a signature there?

04:17PM 12 A. Yes.

04:17PM 13 Q. Do you believe that to be John Flickinger's signature?

04:18PM 14 A. I believe so.

04:18PM 15 Q. Okay. Now I'd like to direct your attention into box 12,

04:18PM 16 okay? Under the box 12 for typed print name and title of

04:18PM 17 controlling agent, do you see a name there?

04:18PM 18 A. Yes.

04:18PM 19 Q. Whose name is that?

04:18PM 20 A. Shane Nastoff.

04:18PM 21 Q. And much like yourself, currently, Shane Nastoff is a

04:18PM 22 group supervisor in the DEA, correct?

04:18PM 23 A. Yes.

04:18PM 24 Q. As of September 9, 2013, he -- he had been in the Buffalo

04:18PM 25 office for about, what, four years?

04:18PM 1 **MR. SINGER:** Objection, leading.

04:18PM 2 **THE COURT:** I'm sorry?

04:18PM 3 **MR. SINGER:** Leading.

04:18PM 4 **MR. TRIPI:** All right.

04:18PM 5 **THE COURT:** Sustained.

04:18PM 6 **BY MR. TRIPI:**

04:18PM 7 Q. Do you know how long he'd been in the office by this
04:18PM 8 point?

04:18PM 9 A. Yes, approximately four years, I believe.

04:18PM 10 Q. Okay. Thank you.

04:18PM 11 Now, do you see a date box 11B where that signature is?

04:18PM 12 A. Yes, September 9 of 2013.

04:18PM 13 Q. Now, do you see a signature in the middle there, do you
04:18PM 14 see a signature there?

04:18PM 15 A. Yes.

04:19PM 16 Q. Is that Shane Nastoff's signature?

04:19PM 17 A. I don't believe so, no.

04:19PM 18 Q. Okay. Does that resemble a signature you're familiar
04:19PM 19 with?

04:19PM 20 A. It resembles mine, yes.

04:19PM 21 Q. Did you sign that document?

04:19PM 22 A. No.

04:19PM 23 Q. Do you believe that's a forgery of your signature?

04:19PM 24 A. I did not sign it, I believe.

04:19PM 25 Q. So what's the other option if you didn't sign it?

04:19PM 1 A. Somebody else must have signed that.

04:19PM 2 Q. Your signature. Signed your name.

04:19PM 3 A. Somebody must have signed my signature, and I say that
04:19PM 4 because the first thing that popped out at me was the fact
04:19PM 5 there wasn't a slash and F-O-R when I saw the document.

04:19PM 6 Q. Okay. And if you didn't sign it, and it's your name, is
04:19PM 7 another word for that forgery?

04:19PM 8 **MR. SINGER:** Objection.

04:19PM 9 **THE COURT:** Sustained.

04:19PM 10 **BY MR. TRIPI:**

04:20PM 11 Q. Did you sign this document, yes or no?

04:20PM 12 A. No.

04:20PM 13 Q. Now, in September of 2013, do you know whether Agent
04:20PM 14 Nastoff was generally available around the DEA office?

04:20PM 15 A. Yes, I believe he was.

04:20PM 16 Q. Is a source deactivation form a time-sensitive form that
04:20PM 17 needs to be signed if someone's unavailable?

04:20PM 18 A. I don't believe so.

04:20PM 19 Q. At -- as of that time, about four years into Nastoff's
04:20PM 20 career, what was your opinion of him as an agent?

04:20PM 21 **MR. SINGER:** Objection.

04:20PM 22 **THE COURT:** Sustained.

04:20PM 23 **MR. TRIPI:** 701 opinion, Judge.

04:20PM 24 **THE COURT:** Opinion of Shane Nastoff?

04:20PM 25 **MR. TRIPI:** What is his opinion of Nastoff as an

04:20PM 1 agent.

04:20PM 2 **THE COURT:** What's the relevance of that?

04:20PM 3 **MR. TRIPI:** I can explain if you want --

04:20PM 4 **THE COURT:** Yeah.

04:20PM 5 **MR. TRIPI:** -- if you'd let me come up.

04:20PM 6 **THE COURT:** Yeah.

04:20PM 7 (Sidebar discussion held on the record.)

04:21PM 8 **MR. TRIPI:** So, Judge, we've heard testimony that
04:21PM 9 from several witnesses now that certain forms have not been
04:21PM 10 signed by them, we've heard that from this witness. There's
04:21PM 11 an inference to be drawn as to the certain names are being
04:21PM 12 names being used on forms. If it's someone who has a good
04:21PM 13 reputation in the office, that is another layer where someone
04:21PM 14 could bolster a form and give it less scrutiny for a
04:21PM 15 supervisor to sign off on.

04:21PM 16 So I assume the defense is going to argue on
04:21PM 17 summation, well, a supervisor signed off on all of these
04:21PM 18 things, and I believe I'm allowed to generate facts in the
04:21PM 19 record to create the opposite inference which is if you put
04:21PM 20 certain names on it and those people have good reputations, a
04:21PM 21 supervisor might -- may likely give it less scrutiny.

04:21PM 22 That's where I'm going.

04:21PM 23 **THE COURT:** Okay. Why not?

04:21PM 24 **MR. SINGER:** Number one, it's a bolstering objection.
04:21PM 25 That's the first thing, Judge. He's trying to, without having

Mr. Nastoff character attacked, bolster by having this witness testify that, oh, he's a great agent, he does X, Y, Z. All right? So that's problem number 1.

Secondly, with regard to the proffer that's being made here about what it's being offered for, there's acting G.S.s in the office that sign off on forms. I mean, that's not in dispute. That's one of the reasons why they're there.

And so to say, well, the reason why this particular signature was used is because this person was an acting G.S., there's no link there.

MR. TRIPI: It was because he was a respected agent, not that Nastoff was an acting G.S.

MR. SINGER: So the other part of it, Judge, is that there's other people who signed these this forms, too. We had Agent Leary in this morning who was signing a form, he was not an acting G.S., didn't have any type of particular credibility.

THE COURT: What does that have to do with anything?

MR. SINGER: Well, that's what they're offering it for. They're trying to offer --

THE COURT: No, I don't think so. I don't think so. The acting G.S. role, I haven't heard a thing about acting G.S.

MR. SINGER: So what came out in testimony was that Mr. Gentile, in addition to having duties as a regular special

agent, at time periods --

THE COURT: Right.

MR. SINGER: -- at this time --

THE COURT: Right.

MR. SINGER: -- was also an acting G.S. at the time.

So what we expect to have come out in testimony is that his signature was signed there because, well, I'm a well-respected person in the office and I, you know, was an acting G.S. at the time.

That's the basis for the testimony, that's why he's saying this. And again, it's basically putting forward bolstering information which is improper.

THE COURT: Yeah, I'm concerned about the bolstering.

MR. TRIPI: I'm not bolstering anybody's credibility, I'm --

THE COURT: You're bolstering --

MR. TRIPI: I didn't mean to interrupt you, Judge. Sorry.

THE COURT: You're not bolstering Mr. Nastoff's credibility?

MR. TRIPI: Not his credibility as a testifying witness in this trial, which is the proper scope of a bolstering objection.

THE COURT: Okay.

MR. TRIPI: It's going to the --

04:24PM 1 **THE COURT:** So, make your question very precise.

04:24PM 2 **MR. TRIPI:** Okay.

04:24PM 3 **THE COURT:** And I'll probably allow it. But it's got
04:24PM 4 to be a precise. What's his reputation as, you know, a DEA
04:24PM 5 agent, not what's his reputation for honesty and that.

04:24PM 6 **MR. TRIPI:** Okay.

04:24PM 7 **THE COURT:** What's his reputation as a DEA agent in
04:24PM 8 that office.

04:24PM 9 **MR. TRIPI:** Understand.

04:24PM 10 **THE COURT:** And I will allow that.

04:24PM 11 **MR. TRIPI:** Thank you.

04:24PM 12 (End of sidebar discussion.)

04:24PM 13 **THE COURT:** So the question is withdrawn. Ask
04:24PM 14 another question, please.

04:24PM 15 **BY MR. TRIPI:**

04:24PM 16 Q. As it relates to Shane Nastoff, as of the time of the
04:24PM 17 signing of this document or the dates that are relevant to
04:24PM 18 this document, did you have a high regard for Shane Nastoff
04:24PM 19 in the office?

04:24PM 20 A. Yes.

04:24PM 21 Q. Do you believe others had a high regard for Shane Nastoff
04:24PM 22 in the office?

04:24PM 23 A. Yes.

04:24PM 24 Q. Okay. Now, as it relates to you, do you believe that you
04:25PM 25 were well respected in the DEA Buffalo office at this time

04:25PM 1 frame?

04:25PM 2 **MR. SINGER:** Objection, speculation.

04:25PM 3 **MR. TRIPI:** His own self belief of his --

04:25PM 4 **THE COURT:** About himself?

04:25PM 5 **MR. TRIPI:** For the same argument.

04:25PM 6 **THE COURT:** Sustained, sustained, sustained.

04:25PM 7 **BY MR. TRIPI:**

04:25PM 8 Q. Do you have an opinion about why your name would be
04:25PM 9 placed on that signature line?

04:25PM 10 **MR. SINGER:** Objection, speculation.

04:25PM 11 **THE COURT:** Sustained. Sustained.

04:25PM 12 **BY MR. TRIPI:**

04:25PM 13 Q. Okay. What is the purpose of having a second person
04:25PM 14 other than the handling agent sign the deactivation form?

04:25PM 15 **MR. SINGER:** Objection, asked and answered, Judge.

04:25PM 16 **MR. TRIPI:** That was not.

04:25PM 17 **THE COURT:** No, it wasn't. Overruled.

04:25PM 18 **THE WITNESS:** I'm sorry, could you repeat.

04:25PM 19 **MR. TRIPI:** Ms. Sawyer, could you please repeat the
04:25PM 20 question?

04:25PM 21 (The above-requested question was then read by the
04:26PM 22 reporter.)

04:26PM 23 **THE WITNESS:** I think just to make sure that both
04:26PM 24 agents that are the handlers are aware of the fact and maybe
04:26PM 25 communicate with each other that that individual is no longer

going to be signed up as a confidential source.

BY MR. TRIPI:

Q. And you were not a handler of or a co-handler of this source, correct?

A. I was not.

Q. So you wouldn't have any basis of knowledge to verify any of the information, right?

A. Correct.

Q. As a group supervisor --

MR. TRIPI: We can take that bold down, leave the document up.

BY MR. TRIPI:

Q. As a group supervisor, do you sign a lot of forms?

A. Yes.

Q. Do you have to sign off on a lot of reports?

A. Yes, I do.

Q. I imagine those include DEA-6s, deactivation forms for services, all kinds of documents, right?

A. Yes.

Q. Do you conduct signature comparisons of agents when they come hand you a form to sign off on?

A. No.

Q. Why don't you do that?

A. Well, I don't have the time. I think things are different now because now everything is electronic, so I

04:27PM 1 don't know what time frame you're referring to.

04:27PM 2 Q. Was there a time when there were hardcopy signatures that
04:27PM 3 you had to sign off on?

04:27PM 4 A. Yes.

04:27PM 5 Q. Were there hardcopy signatures in 2019?

04:27PM 6 A. I believe so, yes.

04:27PM 7 Q. 2020?

04:27PM 8 A. Yes.

04:27PM 9 Q. 2021?

04:27PM 10 A. Yes.

04:27PM 11 Q. Previously when you were an acting G.S.?

04:27PM 12 A. Yes, there was.

04:27PM 13 Q. Okay. Did you ever conduct a handwriting comparison when
04:28PM 14 agents handed you a form for signoff?

04:28PM 15 A. No.

04:28PM 16 Q. Did you trust what they were handing you?

04:28PM 17 A. Yes.

04:28PM 18 Q. Do group supervisors get a lot of emails?

04:28PM 19 A. Yes.

04:28PM 20 Q. Are you cc'd on emails?

04:28PM 21 A. I am.

04:28PM 22 Q. As a group supervisor, when you're cc'd, in the cc line
04:28PM 23 of an email, do you independently investigate and verify
04:28PM 24 every sentence that an agent writes in an email?

04:28PM 25 A. I don't.

04:28PM 1 Q. How many emails do you estimate a G.S. gets a month?

04:28PM 2 A. A few hundreds.

04:28PM 3 Q. Would it be practical to reinvestigate every email?

04:28PM 4 A. In my opinion, no.

04:28PM 5 Q. Why don't you reinvestigate the things that agents write
04:28PM 6 in emails?

04:28PM 7 A. I trust what's in the email, and time constraints.

04:28PM 8 Q. In your -- in your experience as an agent and as a group
04:29PM 9 supervisor, if a confidential source had provided valuable
04:29PM 10 information and had performance that was very positive, is
04:29PM 11 that a source that you would close after approximately three
04:29PM 12 months if they had agreed to be a source for a year?

04:29PM 13 A. Again, without knowing who the source is, my answer would
04:29PM 14 be no, I would have kept them open.

04:29PM 15 Q. Okay. Are -- are acquiring and having sources a key part
04:29PM 16 of being a DEA agent?

04:29PM 17 A. Yes.

04:29PM 18 Q. Do more sources being opened help investigations?

04:29PM 19 A. Yes.

04:29PM 20 Q. Are there times when sources may not have current
04:29PM 21 information, but in the future they acquire information
04:29PM 22 that's actionable?

04:30PM 23 A. That's accurate, yes.

04:30PM 24 Q. I'd like to direct your attention back to December 1st,
04:30PM 25 2005. Back a while, okay? But, were you involved in a

1 search of a residence associated with an individual named
2 Craig Border?

3 A. Yes.

4 **MR. TRIPI:** Ms. Champoux, could we pull up Government
5 Exhibit 11A. I believe it is in evidence.

6 **THE COURT:** Hang on until you make sure.

7 **MR. TRIPI:** I believe it was put in evidence subject
8 to connection the other day.

9 **THE CLERK:** Yes, it was.

10 **MR. SINGER:** That's correct.

11 **MR. TRIPI:** So could we display this warrant?

12 **THE CLERK:** To the jury.

13 **THE COURT:** Yes.

14 **MR. TRIPI:** Yes.

15 **THE CLERK:** Thank you.

16 **BY MR. TRIPI:**

17 Q. And, Mr. Gentile, this is a DEA-6; is that right?

18 A. Yes.

19 Q. And if you look in the details, paragraph 1, does it --
20 I'm going to summarize it if that's okay, but does that
21 generally relate to execution of a search warrant December
22 1st, 2005?

23 A. Yes.

24 Q. In the other officers line, does it relate to a search at
25 775 Main Street, Apartment 105, Buffalo, New York?

04:31PM 1 A. Yes, it does.

04:31PM 2 Q. Actually that was box 10, I'm sorry, I read the wrong
04:31PM 3 box. Box 9, the other officers line, are you among the
04:31PM 4 agents who participated in the warrant as documented in the
04:31PM 5 report?

04:31PM 6 A. Yes, I am.

04:31PM 7 Q. Is Mr. Bongiovanni another agent who participated in the
04:31PM 8 warrant as documented in the report?

04:31PM 9 A. Yes.

04:31PM 10 Q. And were a number of other agents and law enforcement
04:32PM 11 officers personnel involved as listed there?

04:32PM 12 A. Yes, there were.

04:32PM 13 Q. And when there's a search of a residence by the DEA, so a
04:32PM 14 physical search of a premises, a residential premises, can
04:32PM 15 you just generally describe for the jury how that's conducted
04:32PM 16 by the DEA?

04:32PM 17 A. Yes. Upon making entry into a residence, typically one
04:32PM 18 of the team members, referred to maybe as a team leader, will
04:32PM 19 oftentimes assign different individuals to go into different
04:32PM 20 rooms to begin searching the property.

04:32PM 21 Q. And is -- does the searching personnel make entry after
04:32PM 22 there's an initial entry, and it's deemed to be safe for
04:32PM 23 searching?

04:32PM 24 A. Yes.

04:32PM 25 Q. And do agents generally spread out and search various

04:33PM 1 portions of the residence and premises consistent with what
04:33PM 2 they're authorized to look for in the warrant?
04:33PM 3 A. Yes.
04:33PM 4 Q. And do agents essentially have authority to search all
04:33PM 5 areas of the authorized premises consistent with the warrant?
04:33PM 6 A. Yes, they do.
04:33PM 7 Q. Typical a residential search warrant execution for drugs,
04:33PM 8 what types of areas of a residence, an apartment or a house
04:33PM 9 are you looking in?
04:33PM 10 A. We would look in any area where we think that drugs may
04:33PM 11 be hidden. It could be dresser drawers, it could be ceiling
04:33PM 12 tiles, floorboards --
04:33PM 13 Q. Closets?
04:33PM 14 A. -- closets, under the beds, under mattress.
04:33PM 15 Q. Cabinets, desks, anything where you could find drugs?
04:33PM 16 A. Correct.
04:33PM 17 Q. Is a search warrant an invasive technique?
04:33PM 18 A. Yes, sir.
04:33PM 19 Q. Making entry someone's home?
04:33PM 20 A. Yes.
04:33PM 21 Q. When agents do that, they're authorized to make
04:34PM 22 observations, and then remove that which is authorized by the
04:34PM 23 warrant, correct?
04:34PM 24 A. Yes.
04:34PM 25 Q. When agents do that, when they conduct search warrants

1 like you did on December 1st, 2005, do agents have permission
2 to share what they see at a search warrant with members of
3 the general public?

4 A. No.

5 Q. What is the proper purpose of a search warrant?

6 A. To obtain evidence.

7 Q. Is what is observed and what is seized during the
8 execution of search warrant, is that law-enforcement-
9 sensitive information?

10 A. Yes.

11 Q. Is the information and observations made during a search
12 of someone's house, is that to be disclosed in a proper
13 format, for example, in criminal discovery in a criminal
14 case?

15 A. Yes.

16 Q. Would you or have you ever gone into a search warrant,
17 and then gone and told a friend what was seized, and what you
18 saw in a warrant?

19 **MR. SINGER:** Objection, relevance.

20 **THE COURT:** We're beating this horse pretty good,
21 Mr. Tripi, let's move on.

22 **MR. TRIPI:** Okay. Sounds good, Judge. In 2004 -- we
23 can take can that down, please.

24 **BY MR. TRIPI:**

25 Q. In 2004, are you aware that the DEA Buffalo office opened

04:35PM 1 a file, file titled Michael Masecchia in 2004?

04:35PM 2 A. I'm aware of it now, yes.

04:36PM 3 Q. Have you reviewed some documents that had you listed as
04:36PM 4 among the other officers on some of the documents in the
04:36PM 5 Buffalo file?

04:36PM 6 A. Yes, I have.

04:36PM 7 Q. Did you also review some -- and those same reports, was
04:36PM 8 Mr. Bongiovanni listed as another officer on the file?

04:36PM 9 A. I believe he was, yes.

04:36PM 10 Q. And this was a case based out of parallel case out of
04:36PM 11 Las Vegas?

04:36PM 12 A. Yes.

04:36PM 13 Q. And who was the case agent on the Las Vegas end of
04:36PM 14 things, if you recall?

04:36PM 15 A. I believe it was Anthony Casullo.

04:36PM 16 Q. And many years later, he would come and work in the
04:36PM 17 Buffalo office, correct?

04:36PM 18 A. Yes.

04:36PM 19 Q. And on the Buffalo side of that file, who was the listed
04:36PM 20 case agent?

04:36PM 21 A. I believe it was Michael Hill.

04:36PM 22 Q. And you had said he was someone who had partnered up with
04:36PM 23 Defendant Bongiovanni before?

04:36PM 24 A. I believe so, yes.

04:37PM 25 Q. Now do you remember conducting any specific investigation

1 yourself on that Masecchia file?

2 A. I don't.

3 Q. Do you remember anyone else telling you about specific
4 investigation that was conducted on the file?

5 **MR. SINGER:** Objection, hearsay.

6 **MR. TRIPI:** It's not for the truth.

7 **THE COURT:** Yeah. No, overruled. Do you remember,
8 the question is.

9 **THE WITNESS:** No.

10 **THE COURT:** Read it back, Ann, please.

11 (The last question was read back by the reporter.)

12 **BY MR. TRIPI:**

13 Q. Did the defendant ever disclose to you that he had a
14 personal relationship or friendship with Mike Masecchia?

15 A. No.

16 Q. Did the defendant ever tell you that he went to high
17 school with Mike Masecchia?

18 A. No.

19 Q. Did the defendant ever tell you he went to college or
20 drove to college with Mike Masecchia?

21 A. No.

22 Q. Did the defendant ever tell you that Mike Masecchia was
23 at the stag party of his before his marriage?

24 A. No.

25 **MR. TRIPI:** One moment please, Your Honor.

04:38PM 1 I don't have any further direct exam, Your Honor.

04:38PM 2 **THE COURT:** Cross?

04:38PM 3 **MR. SINGER:** I do, Judge. I'm mindful of the time,
04:38PM 4 and I don't anticipate being done in 20 minutes.

04:38PM 5 **THE COURT:** Well, we'll go until 5 at least, and then
04:38PM 6 decide what to do then.

04:39PM 7 **MR. SINGER:** Very well.

04:39PM 8

04:39PM 9 **CROSS-EXAMINATION BY MR. SINGER:**

04:39PM 10 Q. Hi, Mr. Gentile.

04:39PM 11 A. Good afternoon.

04:39PM 12 Q. So I know we're pressed for time here, so I'm going to
04:39PM 13 try to get through this as quick as I can, okay?

04:39PM 14 A. No problem.

04:39PM 15 Q. All right. So you testified on direct you worked with
04:39PM 16 Mr. Bongiovanni for several years at the DEA, correct?

04:39PM 17 A. Yes.

04:39PM 18 Q. I think you said that you got to the office in 1999?

04:39PM 19 A. Yes.

04:39PM 20 Q. And he arrived in the office in 2001?

04:39PM 21 A. I think, I'm not sure exactly, I believe 2001.

04:39PM 22 Q. So right around that time --

04:39PM 23 A. Yes.

04:39PM 24 Q. -- shortly after you arrived at the DEA; fair statement?

04:39PM 25 A. Yes.

04:39PM 1 Q. And you two, you were never partners, correct?

04:39PM 2 A. I'm sorry, I didn't hear what you said.

04:39PM 3 Q. You were never partners, correct?

04:40PM 4 A. Correct.

04:40PM 5 Q. But you worked cases together, correct?

04:40PM 6 A. Yes.

04:40PM 7 Q. And I think you said that you also worked in the same

04:40PM 8 group as him at some points in time in your career?

04:40PM 9 A. Yes.

04:40PM 10 Q. And so just we can flesh that out again, because I'm not

04:40PM 11 sure if the jury has a total grasp of this yet. But the

04:40PM 12 Buffalo DEA office is divided up into different groups of

04:40PM 13 agents, correct?

04:40PM 14 A. Yes, it is.

04:40PM 15 Q. So one of them is D-57, correct?

04:40PM 16 A. Correct.

04:40PM 17 Q. And they handle more localized narcotics infractions?

04:40PM 18 A. They would handle both local -- something referred to as

04:40PM 19 targets of opportunity, and more long-term investigations

04:40PM 20 also.

04:40PM 21 Q. Okay. And then another one is D-58; is that right?

04:40PM 22 A. Yes.

04:40PM 23 Q. And D-58 does what again?

04:40PM 24 A. That's what's considered the task force group, and again,

04:40PM 25 I think it's fair to say they would handle both smaller

1 cases, quick hits, or targets of opportunity, in addition to
2 long-term investigations.

3 Q. And on top of that, there's also a tactical diversion
4 group; is that right?

5 A. Yes, correct.

6 Q. So what does tactical diversion do? I don't know if that
7 ever came up yet.

8 A. Tactical diversion, it's a relatively new group, few
9 years old. They focus more on pharmaceuticals.

10 Q. So I guess when they're investigating pharmaceuticals,
11 what is it that they're doing with regard to pharmaceuticals?
12 What do they do?

13 **MR. TRIPI:** Objection to relevance as to what the
14 tactical diversion groups does as to pharmaceuticals.

15 **MR. SINGER:** Judge, it's part of the office, I'm
16 trying to give the jury an understanding of what the DEA does
17 and what groups they have.

18 **MR. TRIPI:** They investigate drug cases.

19 **THE COURT:** No, I understand. I'll give you a little
20 latitude, Mr. Singer.

21 **MR. SINGER:** I appreciate it.

22 **THE COURT:** We're not going too far with it.

23 **MR. SINGER:** I'm not going too far with it, I just
24 want to give the jury a basic understanding.

25 **THE COURT:** So the objection is overruled. Go ahead.

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1 **MR. SINGER:** Thank you.

2 **THE WITNESS:** Yeah, so the tactical diversion group

3 would focus on pharmaceuticals, with an emphasis on maybe

4 investigating pharmacists or doctors that prescribe them

5 different pharmaceuticals.

6 **BY MR. SINGER:**

7 Q. Correct. So in other words, if a CVS has someone who

8 might be stealing drugs from the pharmacy, they're gonna be

9 looking at that?

10 A. Yes.

11 Q. And they're gonna look at whether the pharmacy is

12 complying with federal laws or federal regulations with

13 regard to what they need to report on the pharmaceuticals

14 that are controlled that they have?

15 A. Yes.

16 Q. Okay. So it's not really street work, correct?

17 A. I think that's accurate, yes.

18 Q. Okay. So, let's get back to Mr. Bongiovanni. So you

19 worked with him for many, many years, right?

20 A. Yes.

21 Q. And this is as a special agent, the same grade that he

22 is, correct?

23 A. Yes.

24 Q. And then at some point in your career, you get to fulfill

25 a role sometimes, when the group supervisor is no longer in

04:42PM 1 the office, to be an acting group supervisor; is that right?

04:42PM 2 A. That's correct.

04:42PM 3 Q. And so when did you start assuming those

04:42PM 4 responsibilities?

04:42PM 5 A. That, I can't answer. It's very sporadic. As far as

04:42PM 6 being an acting group supervisor?

04:42PM 7 Q. Correct.

04:42PM 8 A. Again, that was a day or two a year, maybe, sometimes.

04:42PM 9 Because there would have been other individuals in the group

04:43PM 10 that are probably more senior to myself that would assume

04:43PM 11 that duty.

04:43PM 12 Q. So not very often?

04:43PM 13 A. I think that's fair.

04:43PM 14 Q. Okay. And when was it that you started to become in a

04:43PM 15 position where you were up for promotion?

04:43PM 16 A. When did I become eligible for promotion?

04:43PM 17 Q. Correct.

04:43PM 18 A. The way it works in DEA is when somebody becomes what is

04:43PM 19 referred to as a GS-13, they become eligible to put in for

04:43PM 20 promotions.

04:43PM 21 Q. Okay. And that's how you got to your current role as a

04:43PM 22 group supervisor; is that correct?

04:43PM 23 A. Yes.

04:43PM 24 Q. And you've been a group supervisor since 2019?

04:43PM 25 A. Yes.

04:43PM 1 Q. Which group do you supervise in DEA Buffalo?

04:43PM 2 A. D-57.

04:43PM 3 Q. Okay. So that's the old group you used to work with,
04:43PM 4 with Mr. Bongiovanni, right?

04:43PM 5 A. Yes.

04:43PM 6 Q. Okay. So, I know that you were never Mr. Bongiovanni's
04:43PM 7 partner, but you did, as you testified on direct, have an
04:43PM 8 opportunity to observation him working in the office,
04:43PM 9 correct?

04:43PM 10 A. Yes.

04:43PM 11 Q. And sometimes you'd support on some of the cases that he
04:43PM 12 was investigating?

04:43PM 13 A. Yes.

04:43PM 14 Q. And it seems like that's what everyone did at DEA. If
04:43PM 15 someone had something big going on at one point in time, they
04:44PM 16 would jump off their cases and help out the agent who needed
04:44PM 17 help?

04:44PM 18 A. That's correct, that's what we do.

04:44PM 19 Q. And that's what you had the opportunity then to observe
04:44PM 20 what Mr. Bongiovanni was doing on cases?

04:44PM 21 A. Yes.

04:44PM 22 Q. And you testified that the type of cases that he
04:44PM 23 generally was involved in were heroin cases?

04:44PM 24 A. I know he did a lot of heroin cases, yes.

04:44PM 25 Q. Okay. And he did a lot of crack cases, as well?

04:44PM

1 A. Yes.

04:44PM

2 Q. And the cases that he was doing, were they kind of like
3 buy-bust operations?

04:44PM

4 A. Yes. I know he did a lot of those.

04:44PM

5 Q. Okay. You mentioned that he did two Title III wiretap
6 cases in his career?

04:44PM

7 A. Off the top of my head, I know for sure he did an

04:44PM

8 investigation early in his career. It was referred to as

04:44PM

9 Operation Déjà Vu.

04:44PM

10 Q. Okay.

04:44PM

11 A. It was a wiretap.

04:44PM

12 Q. Okay.

04:44PM

13 A. And then later in his career, I believe he did some

04:44PM

14 wiretaps with the New York State Attorney General's Office.

04:44PM

15 Q. Okay. And Mr. Tripi asked you whether that was low, or

04:45PM

16 high, or average, and you had remarked average on direct,

04:45PM

17 correct?

04:45PM

18 A. Yes, sir.

04:45PM

19 Q. And so it wasn't a type of case that he did all the time,

04:45PM

20 correct?

04:45PM

21 A. That's correct.

04:45PM

22 Q. Just kind of average for the office?

04:45PM

23 A. Yes.

04:45PM

24 Q. And I guess, you know, you had an opportunity to take a

04:45PM

25 look at Mr. Bongiovanni when he was working at the DEA,

04:45PM 1 right?

04:45PM 2 A. Yes.

04:45PM 3 Q. Is it fair to say that he didn't take on the most complex

04:45PM 4 cases that were investigated by the office?

04:45PM 5 A. I agree with that.

04:45PM 6 Q. Yeah. It was more simple cases?

04:45PM 7 A. Yes.

04:45PM 8 Q. And you're a supervisor now at DEA, right?

04:45PM 9 A. Yes, I am.

04:45PM 10 Q. How many people work for you again?

04:45PM 11 A. I believe I have maybe 12 to 14 people in my group.

04:45PM 12 Q. And you kind of take stock of the abilities of each and

04:45PM 13 every one of those people under your command, correct?

04:45PM 14 A. Yes.

04:45PM 15 Q. And, you know, while I think all supervisors would love

04:45PM 16 to have, you know, everyone a ten-out-of-ten agent, that's

04:46PM 17 just not the fact of the case, right?

04:46PM 18 A. That's correct.

04:46PM 19 Q. And as a supervisor, sometimes you steer people to cases

04:46PM 20 that they're very good at, right?

04:46PM 21 A. I do, yes.

04:46PM 22 Q. And sometimes you may steer people away from cases they

04:46PM 23 might not necessarily excel at, correct?

04:46PM 24 A. Yes.

04:46PM 25 Q. Because that's what good supervisors do?

04:46PM 1 A. I agree with that.

04:46PM 2 Q. Okay. So we talked a little bit about confidential
04:46PM 3 sources in your direct. You testified that, generally
04:46PM 4 speaking, somebody gets signed up for one year; is that
04:46PM 5 right?

04:46PM 6 A. Yeah. And it needs to be explained there was a time when
04:46PM 7 the confidential source agreement with DEA was a one-year
04:46PM 8 term. That agreement is now a 90-day term.

04:46PM 9 Q. And when did that change, sir?

04:46PM 10 A. I don't have the exact date. I'm gonna say maybe three
04:47PM 11 or four years ago.

04:47PM 12 Q. And you know from your training and experience one of the
04:47PM 13 reasons why that changed is because DEA has a policy that if
04:47PM 14 a confidential source can't really produce, or isn't working
04:47PM 15 out, after 90 days the policy is to deactivate that source,
04:47PM 16 right?

04:47PM 17 A. Correct.

04:47PM 18 Q. So, later on in time, the DEA's policy with regard to
04:47PM 19 performance of the confidential sources came more in line
04:47PM 20 with the contract; is that right?

04:47PM 21 A. Yes.

04:47PM 22 **MR. TRIPI:** Objection as to came more in line with
04:47PM 23 the contract.

04:47PM 24 **THE COURT:** Yeah, I don't know what that means, so
04:47PM 25 I'm going to --

[illegible]

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MR. SINGER: Sure.

THE COURT: -- sustain the objection.

MR. SINGER: Let me withdraw and rephrase, Judge.

BY MR. SINGER:

Q. So, currently, the policy is 90 days?

A. Yes, it is.

Q. And that's what you sign C.S.s up for in the agreements?

A. Yes.

Q. And in the past, it was one year?

A. Yes.

Q. And so you had a policy, too, at the time it was a year,

that the person would, if they were not performing,

potentially be deactivated after 90 days, correct?

A. Correct.

Q. So, fair to say that the policy started to match what the

contract expectations were later?

A. I'm not -- I'm not sure I understand.

Q. No, I'm just gonna move on. Don't worry about it.

So, if a C.S., back in the day, did not perform, it was

the DEA policy to deactivate that source after 90 days,

correct?

A. Yes.

Q. And I know that you said you didn't do any work, to your

knowledge, on the C2-13-0026 file, correct?

A. Correct.

04:48PM 1 Q. And you also testified on direct you didn't do any
04:48PM 2 interactions with the confidential source that was mentioned
04:48PM 3 in that case file, correct?

04:48PM 4 A. Correct.

04:48PM 5 Q. So you don't have any basis of knowledge to say whether
04:48PM 6 that person who is the C.S. was performing or not, correct?

04:48PM 7 A. I don't.

04:48PM 8 Q. And you're aware of DEA policy with regard to that
04:48PM 9 confidential source agreement, it has a couple different
04:48PM 10 provisions in there that govern what the controlled -- what
04:49PM 11 the confidential source can and can't do, correct?

04:49PM 12 A. Correct.

04:49PM 13 Q. And you're familiar with the fact that if a confidential
04:49PM 14 source were to use narcotics during the time period they're
04:49PM 15 signed up as a C.S., that's a violation of the agreement,
04:49PM 16 correct?

04:49PM 17 A. Yes.

04:49PM 18 Q. And that can be grounds to deactivate that source,
04:49PM 19 correct?

04:49PM 20 A. Absolutely, yes.

04:49PM 21 Q. Now, on that form that we were looking at earlier --

04:49PM 22 **MR. SINGER:** Ms. Champoux, will you mind bringing up
04:49PM 23 Government Exhibit 9E-3, please.

04:49PM 24 **BY MR. SINGER:**

04:49PM 25 Q. So, Mr. Tripi asked you a couple of questions about some

1 of the blocks of information in there, correct?

2 A. Yes.

3 Q. Do you remember him asking one question about whether it

4 would be something in your training and experience if the

5 source was very good, that it would be odd to deactivate that

6 source?

7 A. Yes.

8 Q. But with regard to this particular source, you don't know

9 whether they were doing a good job or not, correct?

10 A. I have no idea.

11 Q. You only know what the form says, correct?

12 A. Correct.

13 **MR. SINGER:** So, Ms. Champoux, can you zoom in on the
14 bottom block, please?

15 **BY MR. SINGER:**

16 Q. So you talked a little bit on direct about this block of
17 signatures, correct?

18 A. Yes, I did.

19 Q. And with regard to block 12A, you stated that you don't
20 recognize that as Special Agent Nastoff's signature, correct?

21 A. Correct.

22 Q. And that you stated that it also appeared to look like
23 your signature, correct?

24 A. Yes.

25 Q. But you don't believe it's your signature, correct?

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1 A. Correct.

2 Q. And one of the reasons why you don't believe it's your
3 signature is because you don't recall ever being presented
4 this form?

5 A. Correct.

6 Q. So one of the questions you got asked on direct, sir, was
7 the amount of forms you sign as a group supervisor; do you
8 remember that question?

9 A. Yes, I do.

10 Q. And also the amount of forms you sign as a special agent
11 with the DEA; do you remember that question?

12 A. Yes, I do.

13 Q. And I think you testified that it's probably up in the
14 several thousands at this point in time?

15 A. It's accurate.

16 Q. And when you're a group supervisor, you tend to sign even
17 more forms than when you're a special agent, right?

18 A. Yes.

19 Q. Can you remember every single time you signed a form,
20 sir?

21 A. No.

22 Q. And what about forms that you signed one month ago, can
23 you remember every single form you signed?

24 A. No.

25 Q. And so we're talking about a form here that dates back to

1 September 9th, 2013, correct?

2 A. Correct.

3 Q. How many forms do you think you may have signed since
4 September of 2013 in your career as a DEA agent?

5 A. Thousands.

6 Q. Thousands? And you don't have specific memory of every
7 single form you signed going back that far, correct?

8 A. I don't.

9 Q. And you could agree with me that a form from 2013, you
10 would even have less of a recollection of at this point in
11 time in 2023 than any other period, correct?

12 A. Correct.

13 Q. Because it's a long time ago, correct?

14 A. Yes, it is.

15 **MR. SINGER:** You can take that down, Ms. Champoux.

16 **BY MR. SINGER:**

17 Q. So, Mr. Tripi asked you a little bit about the purpose of
18 emails -- strike that.

19 Mr. Tripi asked you about emails you receive as a group
20 supervisor, correct?

21 A. Yes.

22 Q. And you said that you receive many --

23 A. Yes.

24 Q. -- a week?

25 A. Yes, I do.

04:52PM 1 Q. One of the reasons why you receive a lot is because you
04:52PM 2 have people cc'ing you on those emails, correct?

04:52PM 3 A. Yes.

04:52PM 4 Q. And the purpose of the carbon copy is to give you
04:53PM 5 awareness of what's going on, correct?

04:53PM 6 A. Correct.

04:53PM 7 Q. And I know that all of us, we have busy jobs, it's
04:53PM 8 difficult to cut through all of the emails, but when your
04:53PM 9 subordinates are cc'ing you on email traffic that they send,
04:53PM 10 you're gonna take a little more interest in those type of
04:53PM 11 emails than the other ones you're cc'd on, correct?

04:53PM 12 A. The emails I get from the individuals I supervise?

04:53PM 13 Q. Correct.

04:53PM 14 A. Yes. I'll take an interest in those, yes.

04:53PM 15 Q. So what I'm getting at is, like, all of us get cc'd on
04:53PM 16 various emails, right?

04:53PM 17 A. Yes, sir.

04:53PM 18 Q. If you got cc'd on an email from your boss, you'd
04:53PM 19 probably pay more attention to that email than you would
04:53PM 20 other emails, correct?

04:53PM 21 A. I would yes, sir.

04:53PM 22 Q. And the same thing goes for subordinates under your
04:53PM 23 charge, you're responsible for them, right?

04:53PM 24 A. Yes, I am.

04:53PM 25 Q. Your duty is to look after them, correct?

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1 A. Yes.

2 Q. And so sometimes, if they send an email and you're cc'd

3 on that, it's probably because they want to alert you to

4 something that's important, correct?

5 A. Yes.

6 Q. And you want to also keep tabs on what they're doing,

7 correct?

8 A. I would.

9 Q. And that's a way for all of you to communicate back and

10 forth about what's going on in particular cases, right?

11 A. Yes, it is.

12 Q. And what's going on in particular matters, correct?

13 A. Yes.

14 Q. So, I know you receive hundreds of emails a week. But

15 for the ones that you receive from your subordinates, you

16 read those, right?

17 A. I do.

18 Q. And it's not just reading those emails, but you also have

19 conversations with your subordinates about the emails that

20 they send, right?

21 A. I have, yes.

22 Q. You bring them into your office sometimes?

23 A. Yes, I do.

24 Q. You also have meetings weekly or monthly with them?

25 A. Probably every other month I have group meetings.

04:54PM 1 Q. Okay. So every other month, you have a sit-down with
04:54PM 2 your group?

04:54PM 3 A. Yes, I do.

04:54PM 4 Q. And the purpose is to coordinate and to talk about cases?

04:54PM 5 A. Yes.

04:54PM 6 Q. And fair to say that some of the information you're
04:54PM 7 getting on these emails that you're cc'd on is coming up in
04:54PM 8 those conversations?

04:54PM 9 A. Yes.

04:54PM 10 Q. Okay. So it's not like you have total unawareness of
04:55PM 11 emails that you're cc'd on, right?

04:55PM 12 A. That's accurate, yes.

04:55PM 13 Q. You talked a little bit about a case in, sorry, 2004
04:55PM 14 regarding a Michael Masecchia?

04:55PM 15 A. Yes.

04:55PM 16 Q. And you testified earlier that you didn't have any
04:55PM 17 specific recollection of that case and your involvement in
04:55PM 18 it, correct?

04:55PM 19 A. Correct.

04:55PM 20 Q. And you don't recall your -- you had to use documents
04:55PM 21 from the DEA to refresh your memory as to what you did in
04:55PM 22 that case?

04:55PM 23 A. Yes.

04:55PM 24 Q. And that case was a long time ago, correct?

04:55PM 25 A. Yes, it was.

04:55PM 1 Q. And it left your memory that you had any involvement in
04:55PM 2 the case, correct?

04:55PM 3 A. Yes.

04:55PM 4 Q. But then you took a look at the documents, and you're
04:55PM 5 able to refresh your memory as to what you may have did?

04:55PM 6 A. They did, yes.

04:55PM 7 Q. Okay. So I'd like to direct your attention back to
04:56PM 8 Exhibit 9E-3.

04:56PM 9 **MR. SINGER:** Ms. Champoux, would you mind bringing
04:56PM 10 that up? And can you zoom in on the signature block down at
04:56PM 11 the bottom?

04:56PM 12 **BY MR. SINGER:**

04:56PM 13 Q. So, again, block 12A, it's your testimony today that you
04:56PM 14 don't believe that signature's yours, right?

04:56PM 15 A. Correct.

04:56PM 16 Q. It looks like your signature though, right?

04:56PM 17 A. Yes.

04:56PM 18 Q. But you don't believe it's yours?

04:56PM 19 A. Correct.

04:56PM 20 Q. And one of the reasons is because there's no F-O-R marked
04:56PM 21 next to it?

04:56PM 22 A. Yes.

04:56PM 23 Q. And another reason is because you just don't recall
04:56PM 24 signing the form, correct?

04:56PM 25 A. Correct.

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MR. SINGER: Thanks, Ms. Champoux.

BY MR. SINGER:

Q. But this form was dated a long time ago, correct?

A. Yes.

Q. And so with regard to your signature, I think you said it was somewhat simplistic on direct; is that right?

A. Yes.

Q. When you're signing documents at the rate you do, do you tend to try to keep it simple, to make sure you get everything signed on time?

A. Yes.

Q. And when you're signing documents like this, are you trying to get through the document as quick as possible as far as the signature?

A. If I have a lot of them, yes.

Q. Yeah, and I guess as a G.S., when people are dropping off paper to you, and I realize it's all done electronically now, but back in the day when they would drop off paper to you, did you have an inbox on your desk?

A. Back in the day I wouldn't, no.

Q. Okay. So how did people provide paper for you to sign?

A. Back in the day, I would assume they would have walked it over to me.

Q. Okay. And then hand you the document. Would you sign this the same way that you signed a credit card receipt?

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1 A. Yes.

2 Q. Would you sign it the same way you would sign your will?

3 A. I would assume, yes.

4 Q. Would you sign it the same way that you'd sign letters

5 going out?

6 A. Yes.

7 Q. So, use the same signature all the time?

8 A. I'm not gonna say all the time. Most likely, yes.

9 Q. Most likely?

10 A. Yes.

11 Q. Okay. All right. So, I want to bring your attention to

12 a couple different exhibits.

13 **MR. SINGER:** Ms. Champoux, if you can bring that

14 down. If you can bring up just on the witness's screen

15 because it's not in evidence defense Exhibit K.2.

16 I'm sorry, can you bring up K.1 first? I'm sorry.

17 **BY MR. SINGER:**

18 Q. So I'm going to show you a couple different exhibits

19 here. I'd like you to take a look at them, okay? When

20 you've had a chance to review these, it's seven pages, please

21 look up at me.

22 Have you had an opportunity to review all those forms,

23 sir?

24 A. Yes.

25 **MR. SINGER:** Okay. Judge, I know it's 5:00 right

05:00PM 1 now, so --

05:00PM 2 **THE COURT:** Yeah. So how much -- how much longer do
05:00PM 3 you think --

05:00PM 4 **MR. SINGER:** My guess is probably about another 15 or
05:00PM 5 so, and then I know there's going to be redirect.

05:00PM 6 **THE COURT:** Okay. So we will break. We will break
05:00PM 7 now for the week. It's been a long week.

05:00PM 8 So, folks, we'll take our weekend recess now.

05:00PM 9 Again, it's so important now more than ever that you
05:00PM 10 follow these instructions, because you're going to be away
05:00PM 11 from the case for a weekend, you're going to be with your
05:00PM 12 family, so please remember not to discuss any aspect of this
05:00PM 13 case with anyone.

05:00PM 14 Don't do any research on your own. Don't use tools
05:00PM 15 of technology to research the case or to communicate about the
05:00PM 16 case with anyone.

05:00PM 17 Don't read or listen to or observe any newspaper or
05:00PM 18 TV or radio or internet coverage of the case, if there is any,
05:00PM 19 while the case is still on trial.

05:00PM 20 And please remember not to make up your mind about
05:00PM 21 anything until all the evidence has been presented, and the
05:01PM 22 case is finally submitted to you.

05:01PM 23 So we'll resume again on Monday morning at 9:30.
05:01PM 24 Again, my sincere thanks.

05:01PM 25 **JURORS:** No, 11:00.

s/ Ann M. Sawyer
Ann M. Sawyer, FCRR, RPR, CRR
Official Court Reporter
U.S.D.C., W.D.N.Y.

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USA v JOSEPH BONGIOVANNI

TESTIMONY OF MARK GENTILE - FEBRUARY 29, 2024

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